



CITY OF FORT LAUDERDALE

BOARD OF ADJUSTMENT MEETING
CITY OF FORT LAUDERDALE
JANUARY 8, 2020 – 6:30 P.M.
CITY HALL CITY COMMISSION CHAMBERS
100 NORTH ANDREWS AVENUE
FORT LAUDERDALE, FLORIDA

Board Members	Attendance	Cumulative Attendance 6/2019 through 5/2020	
		Present	Absent
Douglas Reynolds, Chair	A	6	1
Howard Nelson, Vice Chair	P	6	1
Eugenia Ellis	P	6	1
Blaise McGinley	P	7	0
Patrick McTigue	P	6	1
S. Carey Villeneuve	P	4	3
Chadwick Maxey	P	5	2
Alternates			
Chip Falkanger	A	5	2
Shelley Eichner	A	4	3
Tim Bascombe	P	4	3

Staff

D' Wayne Spence, Assistant City Attorney
Mohammed Malik, Zoning Administrator
Burt Ford, Zoning Chief
Chakila Crawford-Williams, Administrative Assistant
Brigitte Chiappetta, Recording Secretary, Prototype Inc.

Communication to the City Commission

None

Purpose: Section 47-33.1.

The Board of Adjustment shall receive and hear appeals in cases involving the ULDR, to hear applications for temporary nonconforming use permits, special exceptions and variances to the terms of the ULDR, and grant relief where authorized under the ULDR. The Board of Adjustment shall also hear, determine and decide appeals from reviewable interpretations, applications or determinations made by an administrative official in the enforcement of the ULDR, as provided herein.

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I. Call to Order

The meeting was called to order at 6:34 p.m. Roll was called and a quorum determined to be present.

II. Approval of Minutes – December 2019

Motion made by Ms. Ellis, seconded by Mr. McGinley to approve the Board's December 2019 minutes. In a voice vote, motion passed unanimously.

III. Public Sign-In / Swearing-In

All individuals wishing to speak on the matters listed on tonight's agenda were sworn in.

During each item, Board members disclosed communications they had and site visits made.

IV. Agenda Items

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CASE: B19033

OWNER: OAKLAND 95 LLC

AGENT: N/A

ADDRESS: 2598 NW 18 TERRACE, FORT LAUDERDALE, FLORIDA 33311

LEGAL DESCRIPTION: OSSWALD PARK 143-29 B PT OF PARCEL A DESC'D AS, BEG AT NE COR OF NW1/4 OF SW1/4 OF SEC 28, W 45, SE 54.78, N 32 TO POB

ZONING DISTRICT: M3 (Broward County Zoning)

COMMISSION DISTRICT: 3

REQUESTING: **1. Sec. 39-307. General provisions.**
(h) *Use of premises without buildings.* Except for vehicle, equipment or bulk material storage yards, all permitted uses shall be conducted from a building on the plot which building shall be a minimum of one hundred fifty (150) square feet in area and which shall contain permanent sanitary facilities.

The applicant is requesting a variance to allow storage of materials and equipment in addition to conducting the actual work process outside of a building.

2. Sec. 39-307. General provisions.
(i) *Use of residentially-zoned property for access.* No privately owned land or public or private street upon which residentially-zoned properties directly abut shall be used for driveway or vehicular access purposes to any plot in a manufacturing and industrial district, except where a public street provides the sole access to the manufacturing and industrial property.

The applicant is requesting a variance to allow access to their property from a privately owned residential property, which is currently owned by the applicant.

3. Sec. 39-313. Limitations of uses.
(n) *Recycling facilities.* Recycling facilities, except auto salvage yards, shall be located at least five hundred (500) feet from any residentially-zoned district and at least two hundred (200) feet from any business-zoned district. All materials stored, handled or repackaged on the premises shall either be in containers or stored within a building.

The applicant is requesting a variance from the requirement that the recycling facility be located no less than five hundred (500) feet from any residentially zoned property and no less than two hundred (200) feet from any business zoned property. These residential and business zones are located within the City of Oakland Park.

***This case was deferred from the November 13, 2019 Agenda**

Kevin Burns, project manager, informed the Board that they had spoken with Oakland Park senior staff and held a community meeting in Oakland Park including the district commissioner and city staff. He explained that the business crushed concrete. Regarding the first request, this property was properly zoned for this type of use. Mr.

Burns said outside operation was the industry standard; it was almost unheard of to do this work indoors.

Regarding the second request, Mr. Burns reported the property was entirely in Fort Lauderdale but they needed access to the property via a residential Oakland Park street, through a residentially-zoned lot that had never been used as such.

Regarding the third request, Mr. Burns said this was not a recycling facility. They crushed concrete and then removed it from the site. The equipment captured dust created in the processing.

Mr. Burns addressed the following:

- The equipment was not as loud as noise from I-95
- There were no concerns that the access roads in Oakland Park could handle the traffic
- They were discussing access issues through the unused residential lot with Oakland Park
- The property was zoned for this use, but the City wanted operations to take place inside a building

Mr. Spence said City staff had determined that a variance must be sought regarding access through a residential property, even though that residential property was not in Fort Lauderdale.

Mr. Nelson differentiated between a permanent rock crushing operation and one done temporarily, on-site. He noted that conducting the operations in a building allowed an operator to control stormwater impact, noise and dust. He stated the industry standards may be changing to favor indoor operations. Mr. Nelson asked Mr. Burns if he could identify a hardship preventing them from operating inside a building and if that hardship would overcome the impact on the neighborhood of noise, leachate and dust control.

Mr. Burns said they would be required to meet many regulatory and oversight requirements not just from the City but also from the Department of Environmental Protection. These requests were the first step.

Mr. Burns stated they anticipated three to four twenty-yard dump trucks to visit the site per day. Darin Whelan, owner, said he had a paving company and intended to use this to reuse his own material. Mr. Burns stated other companies would use the site as well, but they would agree to set a cap of 100 cubic tones or five trucks per day.

Mr. Nelson stated the only two possible permits for this type of operation were recycling or waste facility. Waste was not an allowable use in this district, but recycling operations had distance requirements from residential zoning. Mr. Burns stated there was legislation coming in Florida to further define recycling. He admitted they would

never meet setback requirements if this were considered a recycling facility. Mr. Whelan stated the equipment would be located on the portion of the lot farthest away from residential zoning.

Vice Chair Nelson opened the public hearing.

Peter Schwarz, City of Oakland Park Assistant Director of Economic and Community Development, said Oakland Park staff had sent a letter to Board members expressing objection to all three requests, based on the lack of hardship. He said they had worked with the applicant, but the proposed access through a residential parcel was not permitted by Oakland Park's code. Mr. Schwarz stated this use had the potential to create nuisances such as dust, pollutants and noise, and was incompatible with zoning adjacent to the site.

John Giles, Oakland Park neighbor, recalled that measures to mitigate nuisances from a former asphalt plant had been unsuccessful and had a deleterious effect on his neighborhood. He asked the Board to deny the requests.

There being no other members of the public wishing to address the Board on this item, Vice Chair Nelson closed the public hearing and brought the discussion back to the Board.

Mr. Burns stated they would address Oakland Park issues with Oakland Park. He said Oakland Park, in opposing this business on this property, was "trying to create a useless...multi-million dollar piece of property that has proper industrial zoning which...we're going to have to deal with them later on."

Mr. Burns said there was now a shortage of retention ponds in South Florida. He stated crushing and reusing concrete this was a new concept, an alternative to disposing of concrete by dumping in landfills or filling lakes.

Mr. Villeneuve wanted to encourage reusing concrete and discourage dumping it in landfills and lakes. The shortage of available nearby sites for outdoor industrial uses was increasing the costs of construction. But he felt the hardship was self-imposed because of the planned outdoor operation. Regarding the first request, he felt the outdoor storage should be allowed because it was being done by other nearby properties.

Mr. Spence reviewed the variance criteria and said for approval, the request must meet *all* criteria; for a denial, only *one* criterion must *not* be met:

- a. That special conditions and circumstances affect the property at issue which prevent the reasonable use of such property

- b. That the circumstances which cause the special conditions are peculiar to the property at issue, or to such a small number of properties that they clearly constitute marked exceptions to other properties in the same zoning district
- c. That the literal application of the provisions of the ULDR would deprive the applicant of a substantial property right that is enjoyed by other property owners in the same zoning district. It shall be of no importance to this criterion that a denial of the variance sought might deny to the owner a more profitable use of the property, provided the provisions of the ULDR still allow a reasonable use of the property
- d. That the unique hardship is not self-created by the applicant or his predecessors, nor is it the result of mere disregard for, or ignorance of, the provisions of the ULDR or antecedent zoning regulations
- e. That the variance is the minimum variance that will make possible a reasonable use of the property and that the variance will be in harmony with the general purposes and intent of the ULDR and the use as varied will not be incompatible with adjoining properties or the surrounding neighborhood or otherwise detrimental to the public welfare.

The Board discussed the specifics of their motion for the first request.

Mr. Spence stated the code exempted the storage of vehicles, equipment and bulk materials in the yard. The variance request was to be able to store processing materials and operating equipment in the yard. Mr. Burns stated they understood that storing equipment outside was allowed by the code; they wanted to be able to operate the rock crushing equipment outside as well.

Motion made by Mr. Villeneuve, seconded by Mr. McGinley:

To **deny** the requested variance as to Sec. 39-307.(h), for the conducting of actual work process outside of a building. In a roll call vote, motion passed 7-0.

Motion made by Mr. Villeneuve, seconded by Mr. McGinley:

Regarding Sec. 39-307.(i), to find the applicant meets the criteria for the requested variance and approve it. In a roll call vote, motion **failed** 4-3 with Mr. McGinley, Mr. Maxey, Mr. Bascombe opposed.

Motion made by Mr. Nelson, seconded by Ms. Ellis:

The variance requested under Sec. 39-307.(i) for the use of residentially-zoned property be granted with the proffered restriction of no more than five 20-ton commercial trucks per day that was proffered by the applicant, no earlier than 8:30 a.m. and no later than 3:30 p.m. Monday through Friday.

Mr. Burns said this motion did not give them the relief they were seeking and would deny them access to their property.

Ms. Ellis withdrew her second and motion died for lack of a second.

Motion made by Mr. McGinley, seconded by Mr. McTigue:
Regarding Sec. 39-313(n) to **deny** the request based upon a failure to meet the requirements of the ULDR. In a roll call vote, motion passed 7-0.

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CASE: B19020
OWNER: HOWELL, STEVEN
AGENT: ANDREW J. SCHEIN, ESQ.
ADDRESS: 2616 DELMAR PL, FORT LAUDERDALE FL., 33301
LEGAL DESCRIPTION: GOULD ISLAND 15-62 B LOT 22 BLK 1
ZONING DISTRICT: RS-4.4
COMMISSION DISTRICT: 2
REQUESTING: **Sec.47-19.3.- Boat slips, docks, boat davits, hoists and similar mooring structures.(h) No watercraft shall be docked or anchored adjacent to residential property in such a position that causes it to extend beyond the side setback lines required for principal buildings on such property, as extended into the waterway, or is of such length that when docked or anchored adjacent to such property, the watercraft extends beyond such side setback lines as extended into the waterway.**

Requesting a variance to allow docking of watercraft into the side yard setback on both sides (East and West) of property approximately 2 feet from property line, an encroachment of 8 +/- feet on both sides of property (East and West).

Andrew Schein, attorney for the applicant, said the boat encroached eight feet into the side yard setback. He said per the City's measurements, the boat was within the property lines and about 96 feet long. He acknowledged that although the current neighbors supported the request, future neighbors might not, so they were proffering a condition of approval that the variance would automatically expire with the sale of either abutting property. He also agreed that the variance would expire if a different boat were docked here.

Mr. Schein stated the narrative in the application explained how the request met the criteria for the variance and said there was no impact on navigability of the waterway. He added that there was precedent; in October 2019, the Board had granted a variance for a boat within the setback.

Vice Chair Nelson opened the public hearing.

Mike Meldeau, neighbor, said this boat was 105 feet long, not 96, and explained that the applicant had four boats. He described how boats were properly measured. Mr. Meldeau stated this boat also had a four-man crew constantly living aboard and it completely blocked his view. He stated there was no hardship; keeping the boat here was an economic advantage for the owner. Mr. Meldeau stated one adjacent neighbor has not occupied that property in ten years. The other adjacent neighbor was renting a dock to Mr. Howell. That house had also been on the market for five years. Mr. Malik confirmed that it was not permitted to rent docks in this zone.

John Lane, neighbor, asked the Board to deny the request based on three factors:

1. Fireboat access issues
2. Neighborhood view issues
3. Fairness to those who did not exceed the permitted lengths

There being no other members of the public wishing to address the Board on this item, Vice Chair Nelson closed the public hearing and brought the discussion back to the Board.

Mr. Schein referred to an aerial photo and noted that Mr. Meldeau's property was 75 feet from Mr. Howell's property. He pointed out that there was no right to a view down the Intracoastal. He stated Code Enforcement had dropped a case for violating the rental of dock space. Mr. Schein did not see how the length of the boat affected fireboat access; this would relate to the width of the canal. He noted that in some areas, boats were allowed to be at a zero setback.

Mr. Maxey asked how the hardship was not self-created and Mr. Schein stated this was a property lot width issue. They had considered combining with the lot next door to have a 175-foot lot width but the adjacent lot was non-conforming and could never be split up again. The issue was a matter of how the properties were originally platted.

Mr. Villeneuve asked the specific measurement they were requesting. Mr. Schein stated they were requesting two feet where ten were required.

Motion made by Mr. McGinley, seconded by Mr. McTigue:

To **deny** the application based on its inability to meet the hardship requirement specified in the ULDR. In a roll call vote, motion passed 5-2 with Ms. Ellis and Mr. Villeneuve opposed.

The Board took a brief break.

3.

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CASE: PLN-BOA-19100002

OWNER: AIDS HEALTHCARE FOUNDATION, INC.

AGENT: KENDALL COFFEY

ADDRESS: 409 S.E. 8TH STREET, FORT LAUDERDALE, FL., 33316
TRIO PLAT 153-38 B POR OF PAR A & ALL OF PAR C DESC

LEGAL DESCRIPTION: AS: COMM AT THE NE COR OF PAR A, W 156 TO POB, S 145, W 95, N 119.82, NE 35.48, E 69.82 TO POB, TOG WITH PAR B, & LOTS 10 THRU 13 OF HOAGS SUB LOT 2,3 BLK 58 FT LAUDERDALE 2-10 B

ZONING DISTRICT: RAC-CC

COMMISSION DISTRICT: 4

APPEALING: **Sec. 47-24.12. B - Variances, special exceptions and interpretation of Unified Land Development Regulations. Appeal of interpretation or application of Unified Land Development Regulations (board of adjustment).**

Appealing the Zoning Administrators Interpretation of; Section 47-18.32(D)(5) -The Zoning Administrator has made the determination that the AIDS Healthcare Foundation (AHF) project is a Level V Social Service Residential Facility (SSRF). Whereas the applicant has stated the proposed use is a Mixed-use affordable workforce housing development and not an SSRF.

Mr. Spence explained that this was an appeal of an interpretation of the ULDR. He described the procedures for the hearing. The code required the Board to review the case and determine whether or not the decision by the City was *clearly erroneous*. He confirmed that no attorney had requested or been granted intervening party status.

John Rodstrom, attorney for Villa Tuscany Homeowners Association, the adjacent condominium complex, said he had asked for intervening status in the past and requested it now. Mr. Spence recalled Mr. Rodstrom had requested party status during the site plan process, at which time the City Attorney opined that party status should not be afforded. Mr. Rodstrom reiterated his request for party status regarding the appeal. He said they were adjacent to the proposed project. He confirmed that they were in support of the City's ruling.

Kendall Coffy, attorney for the applicant, said the question was whether this was an apartment building or a social services facility. Per the application, it was clear that this was an apartment building that would serve a very important need for low income

housing. This would serve 54% of Broward's workforce community, and was situated within easy access to public transportation.

Mr. Coffy stated the prior application had been for 680 units and this application was for 500 units. This project also included an emergency fire station, which would be leased to the City for \$1 per year. He said the City Attorney's determination that this was a social services facility was based on an "expert's report" that was never disclosed to the applicant.

Mr. Coffy stated a social services facility was a place for people seeking habilitation, rehabilitation or recovery from physical, mental, emotional or legal infirmity, which was nowhere in this application. There were no staff or structures in this project to provide those services. This was an apartment complex.

Mr. Coffy objected to the "backdoor" way the City Attorney's decision had been made. He felt this was a violation of due process that would prevent them from receiving a fair hearing. He asked the Board to set aside the determination.

Scott Hiaasen, attorney for the applicant, submitted into the record the site plan application, the previous application, and other applications, as well as pertinent email and correspondence.

Margi Nothard, architect, stated her firm had designed the project and prepared the site plan. She described the mixed-use building, and explained that this proposal had 180 fewer units and included a fire rescue station and retail space not in the previous application. They had worked with City staff to reduce the size pursuant to community and staff input. She said the fire rescue station, parking and retail space represented \$5 million of the project.

Ms. Nothard said they had used the term "campus" in the previous application a planning strategy to stress this was a pedestrian environment that was linked to transit areas. The current proposal was not a campus. She said the DRC comment report on the site plan made no reference to this being a Social Services Residential Facility SSRF. The first time she was aware of the City Attorney's determination that this was an SSRF was with the City Attorney's September 20 letter, prior to which she had not been contacted to inquire about social service that may or may not be provided at the site. She confirmed that on September 23, Mr. Malik had issued a letter adopting the City Attorneys position that this was an SSRF, prior to which he had never contacted her to inquire about social service that may or may not be provided at the project.

Ms. Nothard confirmed that the apartment building was not intended to serve people seeking habilitation, rehabilitation or recovery from physical, mental, emotional or legal infirmity. There would be no group habitation, rehabilitation or recovery programs at the apartment building. The building would offer housing to the general public.

Ms. Nothard responded to questions from Mr. Nelson that there were no social service consultation spaces or group meeting rooms in the building. She informed Mr. McGinley that there had never been social services in the project.

Ms. Nothard stated the previous design included parking on another property that was meant for AIDS Healthcare Foundation [AHF] employees. This project's parking would have some spaces available for lease.

Dan Abbott, the City's outside counsel, cross examined Ms. Nothard. She said there was no change in the tenants they planned to serve between this and the prior design. She stated there was no physical walkway between this project and the adjoining parcel owned by AHF; one must cross a road.

Michael Kahane, Southern Bureau Chief for AHF, described their work in Broward County. He said they had been developing housing models to address levels of housing/income inequality. Mr. Kahane stated the project did not rely on a "symbiotic relationship with the AHF Wellness Center and the creation of the campus." He explained that the Wellness Center operated under a contract from the Broward County Health Department that limited them to serving 2,500 patients per month. So the City's statement about a symbiotic relationship between the apartment building and the Wellness Center was not valid. Mr. Kahane confirmed there was no connecting structure between the apartment complex and the Wellness Center. He stated the Wellness Center only diagnosed and treated sexually transmitted diseases. It had no programs aimed at the homeless or recovery populations.

Mr. Kahane said AHF tried to impact health outcomes on a broad spectrum, whether responding to natural disasters, disease outbreaks or housing. In the United States, they had decided to address the housing issue on several levels. In Los Angeles, they were addressing homelessness and in Fort Lauderdale, they were focusing on low income housing. The only criteria for living in this building would be that one made 50% or less of area median income. Rents would be \$500 - \$830 per month. Apartments would be offered to the general public and no social services or medical care would be offered.

Mr. Bascombe asked if they would consider moving the Wellness Center and Mr. Kahane said they would not; they served 3,000 – 4,000 patients per month in this location. Mr. Kahane said tenants must complete an application and would be subject to rental and background verification. He informed Ms. Ellis that the units were designed for single occupancy but they could not ask someone's relationship status, so a unit could house two people. Mr. Kahane stated there was a demand for this type of housing.

Mr. Villeneuve asked Mr. Kahane why there had been a perception about the prior application that the apartment building and the Wellness Center would be

interconnected. Mr. Kahane thought the perception about the prior application had been due to assumptions about the original target tenants: the homeless, but there had never been any connection between the Wellness Center's service and the tenants.

Mr. Kahane informed Mr. Nelson that the City had never requested economic information related the viability of the apartment building that would lead them determine there was a symbiotic relationship between the Wellness Center and the apartment building.

Mr. Abbott cross examined Mr. Kahane. Mr. Kahane stated the Healthy Housing Foundation was not created to respond to homelessness among the HIV/AIDS population. Mr. Abbott said his suggestion was that "these applicants are not housing developers, they are a social service organization for HIV and everything they do is to accomplish that goal." Mr. Kahane countered that they were a global public health organization that had expanded their original focus on HIV. Mr. Kahane discussed AHF's purchase of this and the Wellness Center property with Mr. Abbott. He confirmed for Mr. Coffy that a person's HIV status would not be taken into consideration when applying for an apartment.

Jamie Cole, the City's outside counsel, wanted to submit an online warranty deed for the apartment project property and Mr. Coffy objected.

Mr. Kahane described the shared amenities in the building, including a ground level yard, public balconies, a deck on top of the parking garage and a small market.

Charles Michelson, architect, said he was a member of the American College of Healthcare Architects. He was familiar with the City's ULDR provisions regarding construction of SSRF facilities and had in fact designed an SSRF facility in Fort Lauderdale. He stated the he had reviewed the proposed project, and said there was nothing in the design that would provide services to the public regarding any medical, psychological or social deficiency and so was not an SSRF facility; it was an apartment building.

Mr. Michelson had prepared a document, copies of which Mr. Coffy distributed to Board members, summarizing the features of an SSRF and contrasting those with the proposed project, which was not an SSRF project.

Mr. Michelson stated he had evaluated the building on its own; what was adjacent to did not change the classification of any building. Even if the two properties were combined into one project, the spectrum of services in the Wellness Center would not transform an apartment building into an SSRF facility. He stated this building, as currently designed, could not be licensed as a level 5 SSRF.

Mr. Abbott cross examined Mr. Michelson. Mr. Michelson explained some of the requirements for an SSRF and said adjacency to a clinic alone did not qualify it as an SSRF. If a clinic was developed to service a residential building, that would be different. Even if some of the services were moved into the apartment building, this would not make the apartment building an SSRF.

The Board took a brief break.

Mr. Abbott said the question was whether the applicant intended to establish a “healthy housing” campus or a standalone apartment building. He stated a healthy housing campus would comprise the Wellness Center and the apartment building collectively. The issue was whether or not services would be provided to residents. He said if an apartment building was to serve a special group [not the general public] or to offer special or personal services it qualified as an SSRF.

Mr. Abbott reviewed the prior application and City staff’s questions regarding whether this was an SSRF and requests for additional information. He said the applicant had indicated that this would be a “unified campus.” Mr. Abbot stated the applicant’s position was that “there have been long-term AIDS patients at the Wellness Center...in need of housing and those are the people that are anticipated to be the tenants in the residential facility to make it easy for them to get the treatment in the adjoining building.” The fact that this was designed as two separate buildings did not circumvent the fact that this was an SSRF.

Mr. Abbott stated the revised application included removing the walkway from the apartment building to the Wellness Center. He noted that there was a shared parking agreement in both applications: people living in the apartments would park at the Wellness facility. He said, “What better evidence than the plan was for people to live in one building and get their services in another building and they can even park their car there...”

Mr. Abbott said, “This is an SSRF or not an SSRF based upon whether there is a connection between have a housing component and a services component and none of that changed in the revised application.” He compared the applications and said the current application had made changes “explicitly intended to simply de-emphasize the connection between the two components of the unified project.” He said the prior application stated the project was geared toward housing the City’s homeless, those at risk for homelessness and those experiencing housing instability but the current application “makes it seem more like that the target clientele are not the homeless but instead the working poor or the people that need workforce housing.”

Mr. Abbott referred to the City Attorney’s opinion letter determining that this project was an SSRF, Mr. Malik’s determination that this was an SSRF, a report from Celia Ward, professional planner, concluding that this was an SSRF. He also referred to an

economic analysis indicating that the development would have a “negative implied land value in excess of \$20 million.” Mr. Abbott stated, “Clearly, the plan, which they have not seen fit to provide you...has to be this is not a standalone project, that this is associated with something else and it is clear that the thing that is associated is the treatment facility across the street.”

Mr. Maxey asked Mr. Abbott how this could function as a homeless shelter if the tenants were required to sign leases and pay rent. Mr. Abbott said he thought this was unlikely. He suggested there might be housing subsidies involved and the AHF would make money providing services to the tenants across the street.

Mr. McGinley asked if the rules for determining an SSRF required the dwelling and services to be under the same ownership and Mr. Abbott said it did not “say that expressly.”

Mr. Bascombe asked Mr. Abbott if he had any precedent case law proving the implied connection between the two properties. Mr. Abbott had not brought any. He mentioned university zoning and varied uses and Mr. Nelson pointed out that if one wanted to rent a room in a dorm, the university would require that one was a student. This was how SSRFs operated; only people in a program were allowed housing. He asked Mr. Abbott to provide evidence of the linkage because he did not see it. He did not see a requirement to be in an AHF program to get an apartment. He pointed out that they were indeed serving a special group: those with low income. Mr. Abbott said if this were the standard, it would be very easy to evade all SSRF requirements.

Mr. Villeneuve asked if any investigation was done to prove that the AHF would receive additional funds if they could increase their number of patients by housing them here. Mr. Abbott said he had just heard about that this evening so he had no proof. He said staff had asked these questions in the staff report but the questions had not been answered.

Mr. Malik recalled that he had determined the first application had been an SSRF. He said this project would be allowed in many other zoning districts in the City but in this location, zoned RACCC, a level 5 SSRF was not allowed. Mr. Malik stated he had asked the City Attorney about the second applicant, and the City Attorney had opined that it was an SSRF also.

Mr. Nelson asked Ken Krasnow, Colliers International, how he had conducted the valuation analysis. Mr. Krasnow said his analysis was based on realization, when/if the property were sold after being developed.

Mr. Coffy referred to the Development Review Committee’s comments on the current application dated 6/25/19 and asked Mr. Malik where staff had indicated this was an SSRF or where staff had asked questions to determine if this was an SSRF. Mr. Malik

said there were none. Mr. Malik confirmed for Mr. Coffy that he had reminded the City Attorney of an expert report from the Tuscany condominium association a few days before the City attorney opined on the matter and the City Attorney had reached the same conclusions as the Tuscany report.

Vice Chair Nelson opened the public hearing.

Shelby Smith said he supported the study created by the third party and the City's determination that this was a level 5 SSRF. He felt the impact would be too great on the surrounding community.

Charles Jackson explained the difficulty he and his wife had trying to find an affordable apartment.

Julie Gardener said she believed it was an apartment building, not another type of facility. She stated they must decide what kind of community they wanted to be.

Vanessa Villaverde said the perception was that the City had very intentionally blocked the AHF's free (subsidized) housing solution. She said the City had a history of housing discrimination and asked Board member what their legacy would be.

Christine Curry, President of the Rio Vista Civic Association, reminded the Board of the opposition letters from the Rio Vista Association's Board and general membership. She requested the Board deny the relief the applicant was requesting.

Kevin Cochrane recalled that the City had a housing first policy, and a partnership with the Broward Coalition for the Homeless to house homeless people and provide them case managers. He said the first step was facility-based care and he believed that is what this was. Mr. Cochrane claimed this project's units did not meet the State's minimum housing requirements.

John Gagne said the question was whether the City Attorney was clearly wrong. Mr. Gagne believed the City Attorney was correct.

Jason Defreitas said he was a substance abuse and mental health nurse and had referred many people to AHF, most of whom were not HIV positive.

A.J. Alegria stated he volunteered at AHF and noted the prevention work they were doing. He said affordable housing helped prevent homelessness.

James Bartholomew, President of New River Landing, said they agreed with the City Attorney's determination. He said the original intent was to build a level 5 SSRF and the target population was the homeless.

Maura Rossi read an email she had sent to Board members outlining her fears of the strain the project would put on neighborhood streets and her belief that the apartments were too small to be habitable.

Brad Nester said he worked for AHF managing the housing subsidy program. He stated their housing subsidy program utilized funds from their other operations.

Melinda Bower said she agreed with the City Attorney's opinion. She claimed the AHF pharmacy was its profit engine.

John Rodstrom said the City had taken a long time to reach this decision. He stated a level 5 SSRF was not permitted in this zoning district but would be allowed in many other areas of the City.

Clint Acosta did not see the connection between services and the apartment tenants but he felt there was a lot of fear mongering.

Mark Mitchell thought the applicant had proved this was not a level 5 SSRF. He pointed out there was a housing crisis in Fort Lauderdale, including his own experience of having three jobs and needing 60% of his income for housing. He stated this was a solution to the affordable housing issue.

Robin Merrill stated she opposed the City's opinion that this was an SSRF. She had seen a mock-up of an apartment and said she fell in love with it. Ms. Merrill stated a lot of restaurant owners wanted this facility for their employees.

Mark O'Brien stated he was a nurse at AHF and he supported what they were doing. He had spoken to the architect and said this was affordable housing.

Bryan Wilson stated the City had made a mistaken interpretation that this met the criteria for an SSRF. He pointed out that one did not need to be a client of AHF to qualify for this housing.

Ilene Michelson referred to the Pinnacle at Tarpon River mixed income project, and said there were problems with those residents parking in her building's lot cross the street. She asked the Board to uphold the City's determination.

Ian Lubetkin thanked AHF for trying to bring affordable housing to the community. He said AHF made \$1,000 per patient, per month from their pharmacy and giving patients easy access to their pharmacy allowed them to "operate a very profitable apartment building."

Ken Cooper said the Board must determine whether or not the City Zoning Administrator's opinion was clearly erroneous. He stated they did not have "clear and convincing evidence" to overturn the determination.

Jonathan Jackson stated he planned to move back to Fort Lauderdale. He had been forced to move because rents were too high. He said the City's attorney had not shown a linkage between the AHF facility services and the housing. He felt the City's determination was therefore clearly erroneous.

There being no other members of the public wishing to address the Board on this item, Vice Chair Nelson closed the public hearing and brought the discussion back to the Board.

Mr. Abbott entered into evidence documents from the Broward County Property Appraiser's website. He stated every other project AHF worked on made it clear that "they address housing issues that are secondary to the patients they are treating for AIDS and the treatment that they provide for them." "There is no basis to conclude that it is irrational to conclude that this project will be similar to those." He asked the Board to affirm the determination of the Zoning Administrator.

Mr. Coffy said if this were a jury trial, he would call for a mistrial because of the constant invocations of "facts" that were not in the record. Mr. Abbott had intimated that this was a way of "sneaking in under the radar" housing for AIDS patients being treated at the Wellness Center. There was no evidence of this. There had been testimony that the criteria for tenants would be financial and it would be open to anyone meeting those financial qualifications.

Mr. Coffy explained that something was "clearly erroneous" if the uncontradicted evidence pointed to different conclusion. The Board had heard from a qualified expert that this did not meet the criteria for an SSRF. The fact that AHF facilities in Los Angeles focused on residents with chronic illnesses did not prove that this apartment building would. This was a different community with different needs.

Mr. Coffy stated the evidence showed that the City's conclusion was completely wrong and the City had no evidence for the position they had taken.

Mr. Villeneuve stated the type of services that would allegedly be provided were not relevant to the Board's decision. He asked Mr. Spence if the Board should focus on the process and procedure the City used to make a decision or the ultimate decision. Mr. Spence advised Mr. Villeneuve to consider the decision the Zoning Administrator made to determine if he misapplied the law to the facts that he had.

Mr. McTigue asked why AHF had purchased units at Villa Tuscany. Mr. Kahane replied that when they announced the original project, Multiple residents at Villa Tuscany stated

they did not want to be neighbors to this development. At a press conference AHF had announced they would purchase those units at fair market value. Nine people had taken them up on that offer.

Mr. Spence confirmed for Mr. Maxey that if the Board reversed the Zoning Administrator's opinion, staff would process the site plan application. Mr. Maxey did not feel that Mr. Malik or the Board should have the final say; he felt the gravity of the situation was such that it should be up to the City Commission.

Mr. Nelson stated he had considered the testimony and evidence and failed to see the linkage that Mr. Malik saw. He noted that the economic analysis just proved that the applicant should not be a commercial, for-profit apartment builder. The analysis showed that if the facility were sold in the future, it would net \$25 million less than a commercial developer would net for a non-restricted unit. Mr. Nelson pointed out that Zoning regulated a use, not a user.

Mr. Nelson did not see evidence of a connection between the Wellness Center and the rental units one would normally see in an SSRF and he saw no evidence of a linkage between a provision of service and duration of tenancy.

Mr. Spence reminded the Board that approval required a majority plus one vote

Motion made by Mr. McGinley, seconded by Mr. Maxey:

To **reverse** the Zoning Administrator's interpretation of Section 47-18.32(D)(5). In a roll call vote, motion **failed** 3-4 with Mr. Bascombe, Ms. Ellis, Mr. Villeneuve and Mr. McTigue opposed.

Communication to the City Commission

[Index](#)

None

Report and for the Good of the City

[Index](#)

None

Other Items and Board Discussion

[Index](#)

None

There being no further business to come before the Board, the meeting adjourned at 12:55 a.m.

Chair:

Attest:

ProtoType Inc.

Any written public comments made 48 hours prior to the meeting regarding items discussed during the proceedings have been attached hereto.